

STATE BUILDING CODE INTERPRETATION FORM	STATE BUILDING COMMISSION 560 Jefferson Boulevard Warwick, RI. 02886-1394 (401) 889-5550	Code Interpretation No. <input type="text"/> Code Section Date of Staff Preparation <u>6-27-2018</u>
INQUIRER	Michael A Kelly, Esq., Kelly, Souza, Rocha, & Parmenter, PC.	TITLE Attorney for Moving Parties

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JURISDICTION / ORGANIZATION      Newport Rhode Island

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<input checked="" type="checkbox"/> BUILDING CODE	<input type="checkbox"/> 1&2 FAMILY CODE	<input type="checkbox"/> ELECTRICAL CODE
<input type="checkbox"/> MECHANICAL CODE	<input type="checkbox"/> PLUMBING CODE	<input type="checkbox"/> ENERGY CODE
<input type="checkbox"/> ACCESSIBILITY CODE	<input type="checkbox"/> FUEL AND GAS CODE	<input type="checkbox"/> OTHER

QUESTION:                      Applicant submitted      **"See Attached Memorandum"**

1. Relative to an interpretation request relating to transient and non-transient residential property uses and occupancies.
2. Documents submitted by KSR&P Kelly, Souza, Rocha, & Parmenter, PC; Michael A Kelly (attached)  
Cover letter, application notice, code interpretation form, Memorandum in support of request for State Building Code Interpretation 3 pages; Exhibit A – email from Hanley William Newport BO 2 Jan 2017,  
Exhibit B – MCM Architectural Design and Consulting report 4 pages, Aharonian & Associates Inc. report 4 pages
3. Subject Property Addresses
  - A. 18 Rhode Island Avenue Newport RI. (Three Family Structure)
  - B. 517 Thames Street Newport RI. (mixed use structure Residential Commercial)
  - C. One Bull Street Newport Units #1, and # 2. (2 condominium dwelling units)

ANSWER:

1. The question being asked of multiple properties does not provide adequate submission to determine an adequate response related to any of the specific structures indicated. The properties are of varied construction types, of differing or mixed uses, or occupancies and it cannot be determined if the units under consideration are the only ones within each of the structures.
2. The underlying issue of occupancy of the dwelling units and the use as a Dwelling Unit, Non-Transient Occupancy or as a Dwelling Unit, of Transient Occupancy, appears to be relevant and encompasses the underlying question to be answered along with the change of use issue which has been listed as a deciding factor along with the limitation on time of occupancy.
3. Residential Uses are designated into four possible categories R-1 through R-4 the predominant uses under consideration for this question would be R-1, R-2, and R-3, as R-4 is a special use area generally regulated as congregate care, supervised nursing or assisted living type of residential occupancies.

4. Definitions are of importance the following are necessary in the determination of any compliance issue.

5. **DWELLING.**

Any building that contains one or two *dwelling units* used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes

6. **DWELLING UNIT.**

A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

★IBC Commentary “Dwelling Unit”

A dwelling unit as stated, is a residential unit that contains all of the necessary for independent living. This provides a single independent unit that serves a single family or single group of individuals. This terminology is used throughout the code for determination and application of various provisions. A dwelling unit is also distinguished from a sleeping unit which does not have all of the features of a dwelling unit and must comply with a different set of requirements (see the definition of “Sleeping Unit”). A building containing one or more dwelling units is a “dwelling” (see the definition for “Dwelling” and “Townhouse”). A building containing three or more dwelling units is regulated as Group R-2 occupancy. The most common term used for such a building is an apartment house or condominium. To be considered a Group R-3 occupancy, the structure must have one or two dwelling unit, or be subdivide by firewalls between every unit or every two units.

7. **SLEEPING UNIT.**

A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not *sleeping units*.

★IBC Commentary: “Sleeping Unit “

This definition is included to coordinate the Fair Housing Act Guidelines with the code. The definition for “Sleeping Unit” clarifies the differences between sleeping units and dwelling units. In addition, using the term “sleeping unit” for spaces where people sleep will replace a multitude of other terms (i.e. patient room, cell, guestroom) so that there is consistent application across occupancies. Some examples of “sleeping units” are hotel guestrooms, dormitories, bedrooms in boarding houses, patient sleeping rooms in hospitals, nursing homes or assisted living facilities, or housing cells in a jail. Another example would be a studio apartment with a kitchenette (i.e. countertop microwave, sink, refrigerator). Since the cooking arrangements are not the traditional permanent appliances (i.e. a cooktop, range or oven), this configuration would be considered a sleeping unit and not a dwelling unit. As defined in the code, a “Dwelling Unit” must contain permanent facilities for living, sleeping, eating, cooking, and sanitation.

8. **TRANSIENT.** Occupancy of a *dwelling unit* or *sleeping unit* for not more than 30 days.

9. Residential Uses are defined and qualified in the following manner.

**SECTION 310 RESIDENTIAL GROUP R**

10. **310.1 Residential Group R.**

Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code.

11. **310.5 Residential Group R-3**

R-3 Residential occupancies where the **occupants are primarily permanent in nature** and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, or adult and child care facilities that provide accommodations for eight or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code in accordance with Section 101.2. (COMMENT: A Maximum of 2 Dwelling Units can be developed under the RISBC-2 One and Two-Family Dwelling Code)

12. **310.4 Residential Group R-2.**

Residential occupancies containing *sleeping units* or **more than two dwelling units** where **the occupants are primarily permanent in nature**, including:

Apartment houses, *Boarding houses* (**non-transient**) with more than 16 occupants *Congregate living facilities* (**non-transient**) with more than 16 occupants, Convents, *Dormitories*, Fraternities and sororities, Hotels (**non-transient**) *Live/work units* Monasteries Motels (**non-transient**) (COMMENT: The emphasis on this use group of three or more dwelling units in an individual structure is the non-transient nature of the occupancy).

### 13. 310.3 Residential Group R-1.

Residential occupancies containing *sleeping units* where the occupants are primarily transient in nature, including: *Boarding houses* (transient) with more than 10 occupants  
*Congregate living facilities* (transient) with more than 10 occupants  
Hotels (transient)  
Motels (transient)

#### \*IBC Commentary: "R-1 Use Group"

They key characteristics of Group R-1 that differentiates it from the other R occupancies is that the occupants are considered transient in nature (i.e., those whose length of stay is not more than 30 days). There is an expectation that the occupants are not as familiar with the building as those residents in non-transient facilities such as apartment buildings (R-2) and single-family dwellings (R-3). If the occupants are unfamiliar with their surroundings, they may not recognize potential hazards or be able to use the means of egress effectively.

The most common building types classified as R-1 are hotels and motels and boarding houses. Facilities classified as Group **R-1 occupancies may include dwelling units, sleeping units or a combination of both**. Group R-1 occupancies do not typically have cooking facilities in the unit. When a unit is not equipped with cooking facilities it does not meet the definition of dwelling unit in section 202 (definitions). When this occurs, such units are treated as sleeping units for the application of code provisions. A recent trend in development is the construction of extended-stay hotels. **While these units may have all the characteristics of a typical dwelling unit** (i.e., cooking, living, sleeping, sanitation), the length of stay is still typically not more than 30 days. **As such these buildings would still be classified as Group R-1**. If the length of stay is more than 30 days these buildings would be classified as Group R-2. ... (next portion of commentary addresses mixed uses and is not germane to question)

Transient congregate living facilities and boarding houses with 10 or fewer occupants can be constructed to the standards of Group R-3 occupancies rather than the general category of Group R-1. The primary intent of this provision is to permit bed and breakfast type facilities to be established in existing single-family (one-family) structures....

#### Review and opinion of submissions:

The information and enforcement methods enumerated in Mr. Hanley's January 2, 2017 email are supported by both the code articles cited and supported further by the International Code Council Commentary provided above.

The issue of time of occupancy, of Transient and Non-transient are key considerations in the life safety elements he or any building official is obligated to consider.

Transient occupants are also less familiar with alarm systems, paths of egress, emergency escape routes, operation of windows, hardware, and other devices that more permanent residents rely on to achieve safe passage from a structure. The issue of sleeping units vs. dwelling units is not a primary consideration but perhaps equally important when considering the nature of a transient operator of the kitchen in a short-term unit. The NFPA data indicates that 50 % of fires originate in the kitchen. Cooking is the number one reported cause, Heating equipment the number two appliance source of fire. Both of which transient occupants lack familiarity with.

In further review the assumptions offered by the consultant reports in exhibit B that a change of use or occupancy cannot occur within category where multiple occupancies are addressed is erroneous. There are several such instances the most notorious of which is Assembly where a change from Restaurant A-3 to Night Club A-2 could occur, the same occurs in Institutional I Uses.

The substantiation for which is in Chapter 34 Section 3408.

#### **SECTION 3408 CHANGE OF OCCUPANCY**

**3408.1 Conformance.** No change shall be made in the use or occupancy of any building that would place the building in a **different division of the same group of occupancies** or in a **different group of occupancies**, unless such building is made to comply with the requirements of this code for such division or group of occupancies. Subject to the approval of the *building official*, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

The Implication was offered that the building official indicated only one method of compliance.

The statement that compliance would be required to the RISBC-1 Standard for Residential Use R-1 due to transient occupancy being established by the choice of the building owner would be correct assumption.

The methods of compliance are also the choice of the owner and the owners design professionals. Design Professionals could be required (research necessary) as only 1 and 2 family dwellings constructed to the standards of RISBC-2 could be exempt from such practices (RIGL: 5-1 and/or 5-8)

The code has differing paths to achieve compliance.

1. Straight up RISBC-1 / RI Fire Code (as applicable)
2. RISBC-1 using Chapter 34 "Existing Structures" as applicable
3. RI SRC-1 Rehabilitation Building and Fire Code for Existing Buildings and Structures (as applicable)

This review is offered not as a verification or rebuttal to the opinion of the building official as the process for that procedure is clearly defined in RIGL 23-27.3. and this office is not in a position to overrule a municipal official's interpretation or order in any form. The following article is the only method available to officially appeal such issues.

§ 23-27.3-127.2 Local board of appeals.

- (a) A board of appeals shall be appointed by each municipality. The board shall consist of the following five (5) members: one shall be an architect; two (2) shall be professional engineers; one shall be a builder or superintendent of construction; and one shall be a member of the general public. A member of a board of appeals of one municipality may also be a member of a board of appeals of another municipality. An aggrieved party as defined in § 23-27.3-127.1(b)(2)(i) – (b)(2)(vi) may appeal an interpretation, order, requirement, direction, or failure to act under this code by a local official of a city or town charged with the administration or enforcement of this code of any of its rules and regulations, to the local board in that city or town.
- (b) If there is no local board and an appeal is filed with the state board of appeals in accordance with § 23-27.3-127.1, all stenographic costs of the appeal shall be reimbursed to the budget account of the board by the municipality.

This document is offered as an interpretation of the issues presented as best understood by the request. The statements and assertions offered about boarding or rooming or lodging and their understanding of definitions

PREPARED BY:  
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Building Code Commission



STATE BUILDING COMMISSIONER

DATE:  
June 27, 2018

